



ESTATE AGENCY AFFAIRS BOARD OF SOUTH AFRICA

Redressing the Past, Building the Future, and Guiding the Real Estate Industry towards Professionalism.

PROFESSIONAL INDEMNITY INSURANCE FOR ESTATE AGENTS

The sale, lease or management of immovable property is clearly not simply about the estate agent concerned closing the deal and obtaining payment of the agreed commission.

More intrinsic detail is required to ensure that the property transaction is completed in a transparent and compliant manner as required by the Estate Agency Affairs Act, 112 of 1976 ("the Act").

It must be borne in mind that Estate Agency Affairs Board (EAAB) was created to protect members of the public in their dealings with estate agents. Consumer protection, indeed, lies at the heart of regulating the real estate sector.

Property rights and protection are further entrenched by Section 25 of the Constitution of the Republic of South Africa. This section is commonly referred to as the property clause and aims to protect the property rights of landowners whilst, at the same time, looking to safeguard the interests of society.

In light of the legal implications and regulatory framework under which estate agents operate, they are required to provide skilled and accurate professional advice regarding property transactions to avoid any negligence or delictual claim arising against them.

The question, thus, arises as to how do estate agents protect themselves against wrong advice or unprofessional services that they may have provided to consumers in the course and scope of rendering estate agency services.

Professional indemnity cover protects professional advice and service-providing individuals from liability for the costs of defending negligence claims instituted against them arising from, inter alia, the provision of incorrect advice, incorrect property evaluations, listing properties incorrectly, failing to disclose material defects in properties, misrepresentation or breach of contract. Such professional cover is limited to claims arising from negligence or delict and excludes claims for fraud or criminal acts.

Professional indemnity cover is clearly not limited to estate agents and may be extended to other professionals providing professional advice such as architects, attorneys, town planners, engineers, accountants, etc., having regard to the intricacy and special nature of their professional business operations.

In the present case, professional indemnity coverage necessarily focuses on the alleged failure to perform on the part of, financial loss caused by or errors and/or omissions in the services rendered by registered estate agents. The claimant must, as such, prove that actual financial loss was suffered due to the negligence of the professional estate agency practitioner.

The EAAB, in the interests of the general body of professional estate agents, has arranged professional indemnity cover for all registered estate agents, as defined in Section 1(a) of the Act, through Aon South Africa (Pty) Ltd, insurance brokers and advisors (Policy number: 4000/25992), to provide cover against negligence or delictual claims.

The cover provided is based on an 'each and every' claim basis and responds to the legal liability of registered estate agents as a result of alleged or actual negligence which occurred while providing professional estate agency services.

It is important to note that a claim will only be valid if a complaint is lodged by an independent third party. The intention of the indemnity cover, thus, is to protect consumers at large.

The cover per claim is as follows:

Schedule of Limits of Indemnity/Liability			
Section/Extension	Per Claim	Per Policy Period	Excess/ Deductible
Professional Indemnity	R 1,000,000	R 1,000,000	As stated below
Liability Following Employee Dishonesty	R 1,000,000	Included in the Policy Period Limit shown above	As stated below
Joint Venture and/or Consortium Agreements	R 1,000,000	Included in the Policy Period Limit shown above	As stated below
Sub Contracted Duties	R 1,000,000	Included in the Policy Period Limit shown above	As stated below
Fee Recovery	R 250,000	R 250,000	R 5,000
Loss Of Documents	R 50,000	R 50,000	R 250

The above schedule indicates both the cover amount and the negligence and/or delictual actions that are covered. While the schedule clearly indicates amounts claimable it should be noted that the maximum of R1 million rand per claim will frequently not be sufficient considering the costs applicable to legal disputes.

Estate agents are, therefore, strongly encouraged to 'topup' their professional indemnity cover in accordance with the assessed professional risk that they face.

The EAAB is aware that some estate agents may view the necessity of providing additional professional indemnity cover as unduly onerous considering the complex regulatory framework in which they already operate.

It should, therefore, be noted that failure prudently to do so may expose estate agents to a higher risk of personal liability which could conceivably result in the attachment of their assets as well as additional financial burdens. It is essential that estate agents adequately assess the risks to which they are exposed and also seek professional advice in this regard to ensure that they have adequate cover to mitigate these very real risks.

Source: AON South Africa (Pty) Ltd